

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JULIAN A. MILLER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-1367-KAJ
)	
STANLEY TAYLOR, THOMAS)	
CARROLL, DR. ALIE, and RN IHOMA,)	
)	
Defendants.)	

MEMORANDUM ORDER

Before me are the following motions: (1) State Defendants' Joint Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure¹ (Docket Item ["D.I."] 22; the "Motion to Dismiss"); (2) Plaintiff Julian Miller's Motion for Leave to File a Second Amended Complaint (D.I. 39); (3) Plaintiff's Motion for Default Judgment Against Dr. Sitta B. Gombah-Alie (D.I. 38); (4) Plaintiff's Motion to Extend the Time to File an Affidavit of Merit (D.I. 42).

The first motion is contested. The other three, all of which are the Plaintiff's, are not.² Accordingly, the Plaintiff's motions are granted, and the Second Amended Complaint is deemed filed as of today.

¹The "State Defendants" are Stanley Taylor, the Commissioner of the Delaware Department of Correction, and Thomas Carroll, the Warden of the Delaware Correctional Center at Smyrna, Delaware. (See D.I. 22 at 1.)

²Only the State Defendants have responded to the Plaintiff's three motions, and they have noted that they do not oppose them. (D.I. 47.) Dr Alie, though he was served (see D.I. 24; D.I. 38), has not answered or otherwise taken any position on issues in the case. Nurse Ihoma has, it appears, not been served and has made no appearance. (See D.I. 25.)

As to the Motion to Dismiss, it appears that arguments which it set forth are addressed by the filing of the Second Amended Complaint. (*Compare, e.g.,* D.I. 22 at sec. I.A. with D.I. 39, Ex. B at ¶¶ 70-71 and D.I. 40 at 2-3.) Although the State Defendants may yet wish to press certain of their arguments, what those arguments might be and how they would be framed in light of the allegations of the Second Amended Complaint are matters as to which I can only speculate. Consequently, the Motion to Dismiss is denied without prejudice.

Accordingly, it is hereby ORDERED that

(1) State Defendants' Joint Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (D.I. 22) is DENIED without prejudice;

(2) Plaintiff's Motion for Leave to File a Second Amended Complaint (D.I. 39) is GRANTED;

(3) Plaintiff's Motion for Default Judgment Against Dr. Sitta B. Gombeh-Alie (D.I. 38) is GRANTED; and

(4) Plaintiff's Motion to Extend the Time to File an Affidavit of Merit (D.I. 42) is GRANTED, such that Plaintiff shall have until October 23, 2006 to file the required affidavit.


UNITED STATES DISTRICT JUDGE

Wilmington, Delaware
August 24, 2006